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Kenya Research project by Robert M. Press [see: Press, Robert M. (2006) *Peaceful Resistance: Advancing Human Rights and Civil Liberties*. Aldershot, U. K.: Ashgate.]

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Interview conducted by Robert M. Press (bob.press@usm.edu; press.bob@gmail.com)

Interviewee: Pheroze Nowrojee, human rights attorney

Location of interview: Nairobi, Kenya

Date of interviews: August 3, 2002

Transcription by Press includes research notations by the interviewer in brackets or parentheses; some emphasis is added in bold or underlined. BP= interviewer Bob Press; PN=Pheroze Nowrojee. Multiple ?? indicates unclear transcription, spelling or unverified notation.

Biographical information:

Nowrojee is one of the most prominent human rights activists in Kenya. An Indian Parsi by descent, long a Kenyan citizen, Nowrojee is one of the very few members of the Asian communities to actively take up the cause of human rights. Many younger Kenyan attorneys cite him as an important mentor in their own legal work on human rights cases. He is generally quiet, but it is an intense quiet that has a Ghandi-like quality to it. He even looks a bit like Ghandi. And like Mahatma he is an attorney.

Finding a place in his schedule is no easy task, but when he finally arrived, an hour late for a later afternoon appointment, he turned his attention completely to the task at hand, laying out some of his views. I had hoped to get him talking about his own activism, but his thoughts were already galloping down other avenues with that calm focus that sets other issues aside. It would be primarily up to others to recount the many instances where, in his quiet but doggedly determined way, Nowrojee stepped forward to press the claims of human rights in courts he knew were biased and often outrageously pro-government, with judges beholden to an authoritarian head of state who had only begrudgingly accepted some reforms, including multi-party democracy.

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[Criteria not the No. of violations, but whether human rights are criteria in the government]

PN What is important is not whether there is more violation of human rights or less violation of human rights. What is important is what is the mind set of those who are the ultimate decision makers in this country. To what degree does a concern for human rights and law, the rule of law, restrict decision-making in the country, and has that changed? That's your criteria. That's one criteria.

Second, can this improved upon? Can it be corrected if its on the wrong side of the line?

[Key not brave activists but is there change?]

So...the bottom line is not, are there brave people. The bottom line has to be, was there a change? And the function of individuals and bodies and organizations is not to have a continuing demonstration against violations, it's to bring violations to an end. There has to be a purpose towards which all the activities are directed.

BP So rather than fighting fires as they go, get the cause.

[Pressure can work]

PN Get the cause. So you then look and say: can these things be corrected? And begin to weigh objectively not the presence of those who are fighting for human rights but whether there is an objective...direction for human rights. Fortunately I think, yes, there is a...what we saw in '92 and saw

in the late '80s shows there are, there is room for pressure to bring about change. And you've asked certain questions: what is the pressure that brings about change?

I think it's a combination of internal demands and external pressure, specifically at one point, the withholding of funds in [November] 1991.

BP It was only a one time thing, wasn't it?

PN They did it again in '93; they concentrated [their donor leverage power. ?? check archives]

[Combination of factors that advanced human rights]

You see the factors came together: turning off the tap weakened his [Moi's] hold on power. The internal demonstrations kept on growing and weakened his hold on power. His legitimacy had been shattered. The continuous repression was being publicized. The number of detentions was losing him political support within various areas. So all those things had come together at that time. The political demands from the West which supposedly demonstrated an expression of what was being reflected in other parts of the world. All these things had come together.

[Donors didn't bring multi-party elections to Africa after the Cold War. Africans were demanding it long before.]

It's not right to say that multi-partyism came into Africa because the Cold War ended. The Western powers thought now we've got multi-partyism behind the Iron Curtain, we can do it for Africa. That's an insult to the people of Robbin Island who were there long before the events of 1989 in USSR and Eastern Europe. And people were demanding a non-racial, democratic government in South Africa years, years, decades before Brown vs. Board of Education.

BP '20s and '30s.

PN Precisely. And 1912 is the founding of the ANC [African National Congress] and so on. So these are – this type of approach [giving donors credit for the changes] is not a corrected demonstration. Multi-party – Gitobu was demanding multi-party in Kenya and suffering from it long before [the U. S.] State Department and others found they had nothing on their hands but to tinker with Africa except Africa. So this is nonsense.

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[Africa is not without an ideology: democracy is not foreign]

What's important is to realize that Africa is not without ideology or options in ideology. This is what we were talking about the other day. And there have been continuous struggles for a democratized society, both during and after colonial rule had ended. So I think there is room; there is pressure; there is demand. This time I don't think that outside pressure will be there.

BP This time meaning in the 90s and onward.

[It's not aid and seminars that bring human rights; it's internal demands from the people for "fairness".]

PN Now, in 2002. The struggle will be unaided. The demand for a broader presence of a rule of law society, a society that respects human rights, must ultimately be the day to day living among citizens, as opposed to infusions of aid money or money for seminars.

BP It must reflect real living conditions.

PN That's right. And who can bring those about?

BP So in other words, human rights can't just be a quick fix: let's have a seminar; let's cut the funds off today. It's got to be an internalized process, and it's got to be real.

PN Correct. You can't say, a course of civic education brings constitutionalism to Kenya or democratization to Kenya. These things don't bring about [change]; **it's the internal demand for fairness** which is what good citizenship is and what good citizens are saying: We want to be treated fairly; we'll treat others fairly. And that's the strength of this country. It's all we are surviving on at the moment frankly. That demand [must be]... turned into a political reality.

BP When you look back...to that period 87-97, and look at the changes that did occur, can you attribute them to any – you've talked about it's basically a domestic pressure. Were there, can you identify moments of activism, both individual or organizational that, in effect, were effective.

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[Of greater impact than activism were the "failures of the oppressor [Moi's regime]

PN More than activism, some of the things that bring about change are the failures of the oppressors. So, let's try to look at some of the key points on that route.

BP In other words, looking at it from the state's point of view. That would be most helpful because I don't have anybody helping me on that and you're able to kind of see both sides of that.

[Two things that broke KANU (1) rigging in '88; (2) NLM showing an "alternative" to his way of rule.]

PN The one thing that broke KANU and the one-party structure was the 1988 Mlango [??spelling] queuing for the single party elections, both in the primary and in the general elections.

BP What happened there?

PN That is where KANU was choosing its candidates by open queuing and despite this was continuously rigging, both its primary nominees as well as the ultimate members of Parliament. And it broke the trust of the people – the broad-based trust in KANU and swung over a lot of people for the first time to consider alternatives.

BP Is that the case where people could see the line for KANU was shorter than the line for the opponent and KANU won?

PN No, there was only KANU at the time...all those members were KANU, so they stood against each other.

BP Yes, but the one the people liked lost, even though the line was longer.

PN Correct. Correct. [Beyond documented this rigging]

Secondly, take a look at the growth in circulation of Nairobi Law Monthly over the period from founding from 87 to 91. Why? We made the point. If these issues of the rule of law were only the concern of lawyers, then our circulation should stop at 2,000. But the circulation was rising to 15,000. And that's a hell of a lot for a law magazine. We were touching – **Gitobu was touching what people were concerned about and were beginning to say, articulate the alternative. And this is ultimately what Moi could not handle.**

BP What couldn't he handle?

PN He could not handle a demand that was not something he had not dictated. He could not handle an eloquent demand for values because his government was not based on values. His government was based on personal will and personal enrichment. And he was ill-prepared for this questioning of the very foundation [of what he stood for].

[The other side of human rights advancement: a wiser repressor of rights]

In 2002, he can handle all that, and lots more. He can handle a military coup; he can handle a non-military coup attempt; he can handle eloquent activists, and he can handle corrupt Members of Parliament because he reacted as a working politician to a challenge to power and he began to put into

place, bloodily, buying his way out, seducing, talking, persuading, you name it. He used everything, killing [allegedly], murdering [allegedly] Oukos and many others...So, but he learned to handle every aspect of the challenge. So, for example, one way of handling all this is to have a book written by Andrew Morton, African Statesman [??check spelling of author and title]. You can see that Moi by that time had learned. The day of the military mercenary had gone, but you could still buy writing mercenaries in order to do the same dirty work against your own people. So you come out [with a] paid job...

So these are examples of how Moi began to cope with these demands.

BP So one could say, playing the devil's advocate, that human rights, the pressure for human rights, resulted in some concessions and, at the same time, a much wiser, a much stronger, more capable President in terms of repressing those rights.

PN That is exactly right. That is why it is dangerous to believe that in fact there is improvement in the situation.

BP That's a very interesting point. I'll put that away. I understand what you're saying now. So there's a balance there: a negative balance and a positive.

PN It's a negative reaction which is bringing back the situation into the old way.

BP What you're cautioning is don't get caught up at looking at the positive and think, well, we've come a long way.

PN EXACTLY (his first emphasis). [laughs] That's right. By being a 'better' oppressor, a more efficient oppressor, and a more subtle oppressor, he doesn't need so much overt oppression.

BP Could you elaborate on that, because I think it's a very important point.

[SA- TACTICS of government: shift from prominent to anonymous victims]

PN Because this is why it appears that there are less violations of human rights. It's only an appearance. Firstly, he doesn't need it – doesn't need overt oppression because he's now more efficient at holding onto power. Secondly, he moved away from the targeted oppression of well-known leaders and representatives of communities such as [Kenneth] Matiba, [Charles] Rubia, or [Oginga] Odinga and targeted the anonymous who were targeted through the ethnic clashes, the violations of whose rights were horrifically more than anything he had done to any [prominent] individuals: murder, dispossession.

BP I talked to one old lady who said her husband had twelve arrows in him [from clashes in the early 1990s]. Massacres.

PN. Massacres. Now, No. 1. None of these had overseas protective umbrellas such as were there for well-known individuals. Secondly, he pretended that these were clashes taking place between communities and therefore something which *may* happen in the eyes of Kenyans and in the international eyes it's the thing that *should* happen in Africa: that we [colonial powers] have gone, and tribes are at each other's throats as we always knew they would [be].

BP Seen easily from the outside: well, it's just tribes fighting each other.

PN That's right.

BP Historically they've done it.

PN [According to the false argument of Moi, concerning the clashes:] This is an internal domestic matter. And that was again carried to its extreme in Rwanda.

BP One could ask if in fact there are two kinds of pressures here: from elites – two kinds of repression, against elites: he stops that and puts pressure on the ordinary people. One has to ask, what is the common denominator that he’s trying to achieve.

PN **The common denominator [behind his abuse of individuals or groups of voters in ethnic clashes] all the time is retention of his power.** In the individual case, by stopping challenges of the elites for leadership or against his legitimacy, or against overthrow. And in the second one, in the ethnic clashes, to bring about electoral results which return him to power.

BP In other words if you chase enough Kikuyus away, they can’t vote and kick you out.

PN Like Likipia [??site of Rift Valley clashes in 91/92). Precisely.

BP You pick up a Parliamentary seat in Lakonia [??spelling: coastal clashes 97].

PN Correct. At Likoni, you move away the Luyahs and the Luos.

And thirdly [continuing why Moi oppresses] to punish those who do not support him, like Kikuyus in Rift Valley.

BP That’s a kind of terroristic tactic, isn’t it?

PN Absolutely. I think you should put that down [the clashes] as a terror tactic. They were not ethnic clashes; they were ethnic attacks (emphasis) on an unarmed sector on another community which was unarmed initially. [A Human Rights Watch report in 2002 named the government as instigators of the coastal ethnic clashes.]

I have a great deal of unhappiness with the press here, so just make a notation. I have a paper on the private sector I wrote on euphemisms in the press. [Suggested I see David Makali – Media Institute; per Pheroze.

Where do you get “ethnic clashes.” **Who told you they were “ethnic clashes.” Its “ethnic murder.” It’s genocide** because its targeted against a particular people because they belong to a certain, particular group. Because it happens to be 20 [murders] today and 30 today, it doesn’t make it less genocide. Genocide is not about numbers. Then we call it multicide.

BP Its about a conscious attempt to wipe out most of a particular, identifiable group.

PN It doesn’t have to be in large numbers if you are constantly doing it in a selective manner.

BP You can have genocide on the installment plan. I call Burundi genocide on the installment plan. It sounds cliché but its serious.

PN Its absolutely serious. And similiary, these ‘ethnic clashes’ were an installment plan for a particular period and for a particular purpose. He doesn’t care whether the Kikuyus come back after the election or not. But as it happens, why not make a profit out of genocide as well, so that you take away peoples’ land, you take away the houses, you take away whatever was left behind, and don’t let them come back. So you’re even enlarging your constituency by benefiting your people twice over.

[Media euphemisms – and getting used to abuses]

The press has come out with **euphemisms like “ethnic clashes,” “Rift Valley barons,”** when what you mean is the Kalenjin Mafia. Why are we using these euphemisms? So that **we...become used to these things.** And it softens our understanding of what goes on, weakens our collective memory, and they go on to new excesses.

[Counter-argument: new awareness of human rights means people are not getting used to abuses but getting used to demanding their end and becoming more willing to insist on their rights. See spread of human rights groups around the country, and open rebellion in KANU.]

BP Are you suggesting a conscious use of euphemisms or a mis-conscious?

PN No, I'm suggesting firstly that they are conscious and have not been able to either have the courage or the finances to say it as it is. The unconscious part is, there's a limit to how much we continuously can accept in the newspapers and that we are blocking out. It would be interesting to see how Germans would have reacted [before World War II] had the newspapers every day been full of what was going on in Auschwitz or [names another concentration camp – Belsin??], etc., etc. and whether they too would have begun to [write] their descriptions in some other way. But whichever it is, the reaction of people was to move away from government.

[Loss of trust in politicians and politics]

So what we have in this country today is two major, major things. One is, there is no trust in politicians. That is true everywhere, but here it is overwhelmingly so; we are way past it. And No. 2, which is worse, is that we have lost faith in our politics. That means we do not believe that solutions come from the political process. So we look to other processes. We then move from the President, we move from the Parliament, we move from the Cabinet, and we go to let us say the church and say the solutions will come from the church.

BP From prayer

PN And then they don't come from the church leaders because they, too, have been compromised in many different ways. And so you turn to prayer. And you cannot lose your faith in prayer because then you have nothing else. And so it goes on and the evangelists come in and have crowds of 300,000 whereas our leading politicians can only bring 10 to 15 or 20,00, which gives you an idea of what belief there is.

BP There are about 500 people shouting at the trees and bowing their heads in the arboretum today as I ran through.

PN That's their own little prayer group, those are not the evangelists from outside.

BP No, but I mean there is a turning to prayer.

PN Absolutely. Absolutely. Very sincere.

BP No real connection with politics.

[Faith in prayer – and 'outsiders'; and loss of trust among Kenyans:]

PN That's the point, they have disengaged because you have no faith that these solutions come from [politics or politicians]. Then you believe that therefore the solutions must come from outside.

BP 'If the donors would just...'

PN [This view is:] If the donors would just...Donors can do anything. The U.S. government can do anything. Can you get me a scholarship. Can you take me there. You can speak to that man...You can come here and you can stop all this. An example is Professor [Yash] Ghai. He's from 'outside,' although he's a Kenyan; he (emphasis) will come in and give us the solution. And of course he can't. When that realization will come in there will be a further disillusionment, both with the process and the individual - and constitutionalism because when the new constitution will come it will not have solved the polarization that's in the country, the lack of faith in politics and the breakdown of trust between Kenyans.

BP Well if you were to take that analysis and double back between the 87 and 97 period when there was an emerging activism, would there have been a different way to try to change things>

PN No. ...The leaders of '88 to '93 – people trusted in them. FORD, Matiba, Rubia; people believed that these people had suffered for their convictions and were truly offering an alternative for the people, as opposed to themselves. There was a faith that the political process, through a challenge to one party, would, indeed, bring a solution. There was a greater consensus across the country. Sixty percent of the

country was against Moi...In that sort of context, the challenge against human rights violations was a practical challenge, and a challenge that can't wait.

BP A good challenge in your...

PN Yes. So that for example, the more they punished Gitobu Imanyara, for example, the more the resistance grew. The more we lost cases in the courts, the more converts we had gained. So we were the gainers: if we won, we won with a royal flush; if we lost we still lost with two fours, two sevens.

BP During that time were you taking any particular actions that you would regard, looking back, as trying to advance human rights in terms of particular choosing of law suits, or participation in organizations?

PN No, what we were doing, we didn't choose the law suits for the majority of cases. There were a few law suits that were chosen. Otherwise, there were enough law suits coming our way [laughs] by the amount of repression and charges that were being brought – which were all human rights cases. For the right of assembly, we didn't have to go looking. There were charges again on sedition; there were charges against unlawful assembly [laughs], illegal meetings. There was press censorship. Each and every one of these represented a violation of a specific right within the Bill of Rights [of the Kenyan Constitution].

[HR TACTICS in court: a “platform” for dissent. Lots of long, broad statements in defense]

BP And you were involved as an attorney in each of these cases?

PN That is correct. The challenges that came in the law suits had – these were really political cases. And in these political cases, you seek to win, but by definition, winning is not allowed. Therefore the trial has to be used to make the maximum gains. And you show the oppression, you unravel the oppression, the means of oppression; you unravel its illegality. You show the contradiction between the claim that we are a legitimate government and the illegitimate steps that it keeps taking. You make it a platform for the accused, for the opposing view. And we constantly insure that the accused would make long statements and broad statements.

BP So that was one of the tactics: encourage the defendant to make long statements, and the attorney would make long statements in exposing the repression.

PN Precisely.

[IMPACT of TACTICS: at least the aims.]

HR TACTIC: reach the public via the media. Since meetings were often barred]

BP What was the aim behind that?

PN The aim behind that was to maximize the opportunity to reach as many people as possible through the press because we were not allowed meetings. Say from 1988 to 1992. And to use the second TACTIC was to push back the limits and make those limits now more elastic; so that others could push back and weaken them from being as firm as they were.

BP Pushing back the frontiers of repression, in a sense.

PN Yes, pushing back repression and advancing the amount you could speak, and so on. Now that was doing two things: (1) increasing political activity and...civic freedom. But the other was, changing social attitudes toward authority, as well. Because people in the '80s had implicitly accepted on a broad, m across-the-country, that you must not be challenging or be rude to the head of state. Therefore it was impolite, anti-social really, to question what the government is doing. And particularly to name the President and to attack his actions was really bad manners.

BP I remember that. And dangerous, also.

PN And of course [laughs]. We had to do it in all sorts of ways, rudely and politely, in the courtroom, out of the courtroom in magazines and letters and so on.

BP Did you write any letters or articles during that period.

PN Yes, a lot.

BP Which publications?

[Individual activism brought the right to criticize: KANU also the beneficiaries]

PN Nairobi Law Monthly; but we used seminars a lot. From 87 to 92 and right up to 95/96, when I think the final acceptance, that there's no restriction on criticizing anybody. And that struggle, which was indeed dangerous for many people. Gitobu [Imanyara] suffered a lot; and I mention Gitobu because his was a sustained voice speaking through a lot of hardship and suffering, which has resulted in medical problems which are permanent. But Pius Nyamora, for example, for Society magazine, and all the people who had been speaking up, and all the people who made that struggle and suffered at that time to get the right to criticize the head of state, the beneficiaries of those people today are members of KANU who say that Moi cannot dictate the [choice of] presidential candidate [in the 2002 election]. Its so ironical. And I'm sure all the people who did so suffer in the struggle would be delighted that they have enabled their opponents to be freer within their own party.

BP But isn't's freedom something that when it comes, it touches everyone like a river, and in the long run it raises everyone.

PN Absolutely. And it should.

BP So that even if KANU has more freedom, that means the ordinary person might have more freedom, too.

PN Not *might*, indeed has more freedom. And if we finally achieve freedom within KANU, then I think we can say that it was worth doing that [struggle; laughs] It matters not [that that was not the arena the activists were thinking of liberating]. [laughs] But it's important because just as there are other social barriers, the social barrier to change, it is good if change comes to Kenya if it has to come through KANU. Because if people get used to the idea that there can be changes in KANU, then there can be changes in any place. If you accept that authority is not there to be changed by the individual, and so on, people are thinking yes, it can be; indeed it can be [changed].

[Individual activism to 91; then FORD and a few organizations lead human rights effort]

BP If you were to look back and try to figure out between the various elements of change, it looks like what you're saying is that at least around 92, the main actors were individuals.

PN That is right.

BP Then I see it leading into a more organizational...

PN Up to 91 are individuals; from 91 as FORD began to be formed, it became a mass movement and organizations began to come in. Both other political parties, then KANU, as well as ngos. Apart from a few ngos, the rest have been disappointing in terms of being agents of bringing about a broader base of human rights.

BP Which organizations would you characterize as having done significant contributions toward human rights?

PN NCEC (National Convention Executive Council), Mazingira Institute, which is Davinder Lamba's thing, Clarion (Kivutha Kibwana), KHRC. [Pherzoe wrote a poem for KHRC's ten-year anniversary in 2002].

BP Going back to this questionnaire, there are a few points we haven't covered...

PN Those I will cover for you. [I had handed him a copy, earlier]

We said: **can we move people to a rule of law, a position of human rights into decision-making and so on? So the next question is: if it [a human right] is violated..** [role of courts comes in]

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(start of tape one, side two)

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[Key: courts encompassing human rights philosophy]

BP ...some say you don't really need all that many changes [in the constitution], just enforce the Bill of Rights.

PN If we had [enforced the Bill of Rights], we wouldn't have reached this point. So the Bill of Rights, you could have added to it, refined it, brought in basic needs, rights, etc. and so on. The question of its enforcement brings you to the bigger question of: **has the judiciary developed a human rights jurisprudence? Has it shown itself as ready to defend these violations? This is an area you've got to look at** in order to assess how far have we gone in really having a human rights basis [in Kenya].

BP How do you assess something like that?

PN Partly you look at the legal record to see if there is a jurisprudence of human rights.

BP I don't even know exactly what you mean by a jurisprudence of human rights.

PN I'll tell you. That means: has the judiciary – are there enough judgements in place which show that the courts are nurturing certain values. Let me give you some examples...By jurisprudence we mean what is your legal philosophy. Is it based upon freedoms or does the court say free speech is only the gift of the Executive, or does it say and act on the basis that free speech is the inalienable right, etc. of citizens...

BP As I understand it, Kenyan law is based on British law, which is based on morality.

PN Correct

BP And therefore, that might – if I might just interject a question here: to what extent do you think that any progress you have made through the courts is based on the fact that Kenya did inherit that kind of law and it's a law based on morality so the potential is there to kind of squeeze out some good cases, whereas if it was a total dictatorship, they'd say: don't even come to court, it's not worth it. [Muite described this as a very good question; see his reply]

[Potential for fair court decisions was always there]

PN The potential was there. It was the same potential which existed in 1947 for India. And India was able to nurture it and use it and go so far ahead of Britain because it expressed, through a series of decisions, what it thought should be the values of the Indian Republic.

BP But what of the reason I think non-violent resistance worked in India was because somewhere after a lot of repression there was a conscience, a consciousness, a morality, that when you went deep enough, the English public, if not the government, said enough is enough; we can't keep bashing heads. Whereas in a total brutal dictatorship they would just kill them.

[Key is the type of individual who leads: prebendalism vs. nationalism?]

PN Correct. The question that was asked of Ghandi was whether this could function in fascist Germany. It doesn't mean that it shouldn't be done. The point is that **the Executive must be peopled by those whose commitment to values, democracy, rule of law, human rights, learning, creativity, health, is**

greater that their love for the seat and the opportunity to make wealth from it [as in prebendalism, or using the state to serve one's personal interests].

The U.S. was fortunate in 1789. They had the former type of person than the later. India was fortunate in 1947 to have that. South Africa was fortunate in 1994 to have the first type. We were extremely unlucky in 1963 that [Kenya's first President, Jomo] Kenyatta turned out to be the latter type of person when we had expected him to be the former.

[Leaders alone are not enough; it takes a "constellation of good people" to develop human rights.]

And you will see at such moments, there is always a constellation of good people. It's not Mandela alone; it's not Nehru alone; it's not Washington alone. There is a cluster of like-minded people who lay a foundation.

[Emergence of institutions based on values takes time]

Of course there are deviations and people come in and make money, and grab, and run down the country. But such people at the founding moments have also laid the ground for parallel institutions to which the country turns to from time to time. And so a good Supreme Court also slowly emerges while you have people in Tammany Hall and pocketing senators and judges, and so on. But there is also something else building up slowly as well. The same thing has happened in India. And one hopes that South Africa is also going in the right direction.

BP But if you are looking at things in terms of the state, in terms of giving ground. What would you say forced the state, obviously begrudgingly, and at the same time the only ground I really see given is multi-party government in 92, 91-92, and some laws which were changed in 97. There hasn't been all that much...

[1997 reform process was a "betrayal" of opposition aims for greater change]

PN. No, that is correct. Let's take the 97 one. That's the IPPG [Inter-Parties Parliamentary Group] reforms. The opening up of public meetings: they're not opened up. The police will treat us as if they are permitting our meetings, although that is now necessary is notification. Every two or three weeks you'll find it in the papers now [where the police have denied permission for meetings].

BP Not just ordinary people, but some of the elites, too.

PN Specifically the elites. Then the danger comes in. We [Nowrojee was an official with the Social Democratic Party (SDP)] have been stopped; [Member of Parliament and SDP activist James] Orengo's broken fingers [were a result of one confrontation with the police over a meeting the police disrupted?? Verify]. Davinder [Lamba] and [Dr. Rev. Timothy] Njoya have been in hospital. Why? Supposedly illegal meetings.

BP They were hospitalized after the Budget Day [march in 1997] and after the mass protest in All Saints Cathedral [where demonstrators ran for safety but were bludgeoned inside the Cathedral by police and para-military forces clearly acting with the full knowledge, if not orders, of the President. There were some deaths and many injuries that day. Njoya credits journalists with saving his life as security personnel with batons began beating him mercilessly and the journalists threw their bodies over Njoya to protect him.].

PN GThe sequence of all that [is in the newspapers] from 1997 up to today, the last five years. Then they abolished the law of sedition [in the 1997 reforms] as a concession.

BP The law of incitement is still there, though [which Gibson and others argue does essentially the same thing as the sedition law to stifle dissent. But the dynamics have changed dramatically to the point where the incitement law may no longer be effective in curbing dissent.??]

PN Incitement and subversion [laughs].

BP What's the difference [between the abolished sedition law and the retained laws on incitement and subversion?]

PN None [laughs]. Nothing. You see the people who went in to negotiate [opposition Members of Parliament who, in many cases, had been more or less associated with the civil society effort to draft a new constitution] didn't know these things and didn't consult anybody. When they were doing this negotiation, they did not consult Gibson [Kamau Kuria] or [Kivuthia] Kibwana, or any other lawyers, although Kiraitu [Murungi] is a lawyer. [Pheroze was unclear whether Muite was in Parliament for the negotiation; he did not mention Imanyara, who is also a lawyer, or Orengo, likewise a lawyer] I mean we were all there seeing it, but you don't finish the negotiations, publish it and then come to people. The time – this is the bad thing about the negotiations that are being carried out with Moi all the time; its during the negotiations that you have to say: what are you giving me? You're giving me zero. And Moi says, then bugger off, I don't want to negotiate with you. They say: no, no, no, no; let's negotiate for the good of the country; we must be going forward; let's not seem to be breaking [off negotiations]. What have you done? What did you achieve forward?

BP So you would described the reforms of the **IPPG** as minor, then.

PN Not minor; it's **a betrayal. They were a safety valve which defused the steam pressure that had built up.** That was Saba Saba, Nane Nane, Tissa Tissa [public mass demonstrations carried out in 1997 July 7, August – when a national strike was called by NCEC; 8, and September 9, though I see no account of one Sept 9; there was one Oct. 10, which would have been kume kume; altogether there were 11 or so mass actions between May and November 1997 See Mutunga chapter on Mass Action]. Because elections were coming. So the purpose of **the IPPG was to diffuse the mass support by saying: you want no reform, no election; here is the reform.** Gibson [Kamau Kuria] and all [those activists opposed to the IPPG process] called these people traitors. Rightly so. Rightly so. It was a massive give away.

BP Those people [in IPPG doing the negotiations with KANU] being the opposition MP's, though not all of them?

PN The opposition.

BP Who was not among them?

PN Who was not among them? (pause) [MP James] Orengo, [Kivuthia] Kibwana [not an MP], Willy [Mutunga – not an MP] (pause). [Muite?]; [Kenneth] Matiba [not an MP], Koigi [Wamwere – an MP at that time?] (pause). [He named only one MP who was not part of the negotiations; Kiraitu would probably say, as he did in his book, that's its better to be involved in the 'mud' of politics than to stay on the cleaner sidelines. But ??would he agree that the negotiations were a "betrayal" of those who wanted a whole new constitutional arrangement?]

It [the IPPG] was to show you that multi-party was a genuine game. But it was that nothing else came with it; and we didn't demand it.

BP Was that a mistake?

[Moi's power undiminished after switch to multi-party system]

PN Yes. So what was the mistake? The mistake was the consequential restructuring of law, political practice and the opening up of public affairs. We thought that the multi-party thing itself could do it. As the years 92-93-94 went on, Moi saw that he still had better resources than any of the other political

parties. They had proved themselves not to be able to come together to remove him in 92, which is the one time it was possible to do it. And there was a basis for coming together which is not present now. And when he saw that, he saw that **his control of the judiciary hadn't changed, his control over the Army hadn't changed, his control over Parliament hadn't changed. And so what was different from a one-party state, except a lot of people speaking, which he learned how to live with.**

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[TACTICS of Govt: Shifts from blunt repression to subtle control]

And he began to see that even those guys could be bought out or threatened out or...occasionally by the use of proper criminal process you could politically remove him: the inconvenient person.

So this is where Moi learned how to cope with all these internal pressures.

BP So instead of hauling off some well-known guy and putting him in a water-filled cell, you just buy him out, or you rig him out, or you scare him out. It's all done behind the scenes.

PN And it's all done legitimately. No foreign interference can come through.

*[Reformists should have pushed for greater constitutional changes, not just multi-party:

Theory: negotiations theory: failure to ask for enough??]

BP But if you had tried to seek constitutional changes at the same time as multi-party, or before it, would there have been a possibility of getting those things done by a KANU-controlled majority party with no opposition members in it?

PN Yes. That is how multi-party itself came. It was done without any other power.

BP It was done by one man's decision, not by KANU delegates [to the party's meeting where Moi announced Kenya would go multi-party] or [KANU] members of Parliament.

PN No, no, no, of course not. That one man was acting to the pressure.

BP ...you would have gone for a bigger package?

PN A package that would make the main amendment work... Because many later fights came about. For example, who should be the chair of the Public Accounts Committee. How do you deal with the meetings of the opposition party, the rallies, and so on. We felt we had made the gain – an independent electoral commission, for example, and so on... In South Africa the electoral commission was partly drawn from international observers as well, so there were safeguards within it. These were not only KANU people to be left by themselves. [??his point is unclear]

**[Lesson of power shift from Kenya's experience: conditions for concession in authoritarian government]

But...**the lesson we have to learn if we are to make any changes is that no person in power gives any concessions, as you were saying, until either he is threatened or, he can not remove you, and you cannot remove him, and there is an impasse.** That is when there is some need for him to negotiate with the opposition.

[But reformists' tactics were appropriate for the moment]

BP Do you think in looking back, then, that the tactics should have been different; that the elements brought together to bear pressure on the government, which included individual activism and the very beginnings of organizational activism or parties – that there should have been a different mix, different tactics used?

PN No, no. It was right.

BP It was inevitable that the package had to be small at that point?

PN No. It grew out of what was possible...at the time.

BP The maximum achievable was achieved at that time.

PN At that time. That was quite remarkable, really in 91 December to 92. What had happened there was that Moi was pushed to the point that if he did not give way, he had to step aside.

[Note: just earlier, Nowrojee indicated that reformists did not go for enough reforms; ie, they didn't insist on constitutional reforms. That is hindsight. But under further questioning, he acknowledged that in fact the reformists had gone as far as they could under the circumstances and their achievements (multi-party elections) was actually "quite remarkable."]

[Rumors Moi would hand power to the Army to avoid multi-party elections]

BP There were talks at that time, and it was recorded in Weekly Review that there were plans, unconfirmed, for the military to take over, because Moi was giving the power to take over. Was there reality to that?

PN At least we thought so. We believe there was a contingency plan that if he did succeed in containing the thing [the pressure to adopt a multi-party system]..

BP Do you think he had contingency plans to kind of hand over..

PN A palace coup. A palace coup.

BP Before multi-party?

PN Yes, before. That is how we understood it.

...

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[Why pressure for reforms faded from 92-97]

BP So, the maximum was achieved [in the reform move in the early 1990s].

PN The maximum was achieved.

BP It was "quite remarkable" at the moment. Then immediately there should have been more pressure for the second phase, instead of a five year gap where nothing happened until 1997.

PN Precisely, because what happens is, when this was achieved, the mass action went down, after 92. Because we had achieved the aim of that mass action, which was multi-party. The pressure went down. The government learned to bring oppression back again. Pressure built up in '96, '97 again – mass action.

BP Why

PN Because nothing had really changed.

BP And elections were coming again.

[230 IPPG – a clever defusion of pressure by Moi.]

Theory: diversion; divide and defuse, etc.

PN And elections were coming again. When that pressure came and Moi's again being pushed, pushed, pushed back, again he gives way a little, and that was supposed to be the IPPG reforms. In reality he was giving nothing.

BP It was a very clever way of defusing the NCEC momentum and mass demonstrations.

PN It was NCEC and (emphasis) the political parties. See, that's why it was so large. And by defusing it he did both, he defused it and divided the civil society and the political parties, who had come together in IPPG.

BP Is there not an alternative view to that analysis to which maybe you could respond. It was quite natural to move the focus from a non-elected organization of civil society into civil society's elected members, which were members of Parliament and they are the normal arena for making constitutional changes.

PN Both sides of the debate is a totally artificial construct. There is no need for any division. The IPPG talks can be between MP [Member of Parliament] and MP or anybody. The question was, was there enough consultation between those porporting to speak on the non-Kanu sidewith all the people who had brought the situation about?

BP You mean, was there enough consultation between the two sides?

PN No. Within the opposition. You see, if you are an MP, what prevents you from taken Gibson Kamau Kuria to sit with you? Nothing. Why do you have to divide – why do you have to say you are now shifting the focus into people’s representatives and MPs? It’s a completely artificial...

BP So are you saying that in fact the NCEC failed to consult enough people in civil society?

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[Opposition MPs gave KANU a new lease on power]

PN No, the other way around.

Those who went on behalf of the opposition did not consult the NCEC – when they were doing these IPPG negotiations. They never came back and said: Look, KANU says let’s change the public meeting...Gibson would have said [that] to do that...

BP They didn’t come back to consult.

PN Absolutely. And they pretended that they were not liable to consult.

BP Is there any particular reason why they didn’t do that since they come out of civil society, since they were closely related to the opposition.

PN Don’t ask me. A: I wasn’t here. And B: I don’t know what went on between those [opposition] MPs [and KANU MPs]. There was never a difference before. We were all part of NCEC. So there’s no need – When I go into court I don’t say now I don’t have to tell NCEC anything about what these political cases are about. We’re all consulting to the same end. So I don’t know [what happened.] All I can say is that those [opposition MPs] who went into the negotiations with KANU displaced bad (emphasis) judgment, bad (emphasis) communication, were third-rate negotiators and they contributed to at least another 10-15 years of KANU. It’s not so easy bringing mass action forward.

BP You think it will be a long time before it surfaces up again.

PN That depends on what issues come up. When you deal with bread and milk in this way you can have other reasons for mass action. But I’m saying mass action [NCEC] which had already a good organization, good leadership, and a clear leadership, was frittered away.

BP You were out of the country when?

PN August 1997.

[NCEC –a “model for civil society” involvement in political change]

BP Just that one brief month when IPPG...Do you think that the NCEC whole experience was actually a kind of model of good civil society involvement in seeking political change?

PN Absolutely. Absolutely. Absolutely. It was structured because Lamba [a co-convenor] was giving it a proper framework. It was articulate. They had an articulate spokesperson in [Kivuthia Kibwana]. They had a solid, legal assessment and opinion through Gibson [Kamau Kuria]. They had young people ready to work their guts out because they believed that what they were doing was worthwhile.

BP And for a while the active participation of most of the opposition MPs.

[Key to political activity: trust

Theory” governance (Hyden) on trust]

PN Absolutely. They could carry political decision-makers with them. And for me the most important thing, they had the trust of the people because it was seen to be doing it for the public good. That's not a small thing. Which political movement in this country has ever achieved all these factors together? It was [Oginga] Odinga in FORD who could match that record; the original FORD, and to a large extent FORD-Kenya. FORD-Kenya in 1992 was the only party which had a member of Parliament from every single Province. Not KANU, despite their rigging. We were the only people, and Odinga. So these were very strong: NCEC, FORD-Kenya under Odinga, the original FORD. These are not small achievements in the face of no resources, repression, active sabotage and illegalities and so on.

PN I was in FORD-Kenya from 92-99; I resigned in 99 and SDP 2001- *currently* Treasurer. Someone said when I resigned FORD-Kenya: so you've left the party and you are now joining the people. I said yes, that's quite right.

[An often unposed question: why hasn't more progress been made toward human rights in Kenya?]

PN **Why are we not getting solutions within Kenya.**

BP Major question: you're posing it, and I buy it. I like it.

[Note: later in preparing for my meeting with Dr. Mugenda, sometime after this interview, I posed some unanswered questions, and one of them was the opposite of the one I had been asking of why there were some change (what pressures, dynamics, etc). Now I realized there was another question: why wasn't more achieved? Which is what Nowrojee asked at a time when I had not asked others this question. It is an example of the need to listen, to be ready to follow the interviewee's own inclinations and not stick religiously to a prepared questionnaire.]

PN Because we are seeking to put solutions first before the conditions are created within which such solutions can function or work. We look for a new constitution because we think this current structure has been misused and there are failures of implementation, etc. etc. But most of all, we said...we're not a working polity [DAHL??]. We are completely at odds with one another.

[South Africa model: (1) build TRUST; (2) address the "real questions"]

So we say if we have a new constitution, like South Africa, then we will become a new country like South Africa. That's not right.

We have to go back and see why is the South African structure –why are they performing [well] at the moment. Because before you bring these constitutions in place, South Africa went through a process by which the distrust in the country and the intense enmity and horrors of the past had first to be reversed so that you got a series of steps – what in the jargon is called confidence building measures.

BP Four years of hard negotiations.

PN Hard negotiations. And public steps which would bring about – so that ANC will not carry out armed attacks and the Bore government will release Mandela. ANC will not do this and the government will unban...quid pro quo. I call it a double helix in which you are building reciprocal steps which generate public trust. Measures of trust had to emerge between Bore and ANC.

BP And it was slow coming.

PN And it was slow coming. It was documented; it was documented, it was private, it was minuted; it was not minuted. And slowly, people said, goodness, this looks like its working. And slowly, the whites – secondly in that process of confidence building the real questions were being asked.

BP But [in South Africa] you had two people on either side, tough negotiators but willing to seek change.

PN But first they had to ask each other, are you willing to seek change? So those questions were first debated within the ANC. They were debated within the Nationalist Party.

Then came the second question: what are the real problems in the country? The real problems in the country are: you guys, are you willing to accept a non-racial society? Because it means a black majority government. And those people were saying, will you kill us when you are in power? These people said, will you keep all the money you have now, or will you share it. And these people said, will you let us keep our wealth and live in prosperity?

BP Building from total distrust and suspicion to gradually finding...

PN No (emphasis), that is one block. The second block is what are the real questions in the country. And you have to address those even where there is trust. If you are addressing the wrong questions – **Trust is one step, the second step is the real questions.** Don't come and say to me: what was the constitution of South Africa. The real question was: will you kill us, because if you have the power to kill us, it doesn't matter what that paper says. And ANC said, we have always said we won't kill anybody; we want a non-racial government, not a black government; we want a non-racial government. And you people – are you willing to share your wealth that you have accumulated in this fashion. And they said, yes, we must open up... So the bottom line of this came, Bob, and it is this: what is the direction in which we are heading? What is the purpose of our trust-building? What is the purpose of asking real questions? The purpose is – a non-racial, democratic government in this country, South Africa. So to put it simply: a common end to the negotiations.

Now I ask you: what is the common end to the negotiations in this country's constitutional debate, or in IPPG. It should have been a non-authoritarian, non-patronage, non-tribal government. Has KANU agreed to that? Because deKlerk agreed to the non-racial thing, and so did all the whites... But they [KANU] did not agree to this. So what are we going towards?

How we ever achieve the supposed harmony that South Africa has...?

[Why Kenya failed in its negotiations (or rather why the reformists failed).]

Build trust with confidence-building measures over a period of time. Constitutions are not the first point of concern; they follow agreement on the common agreements on answers to the real questions, he argues. In Kenya there was no common agreement on the end point or goal. You had two belligerents distrustful of each other and with different aims.]

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BP So in other words the basic questions haven't been asked.

PN The basic steps have not been taken. That is why we continue to fail?

BP I characterized the questions. Can you repeat what you see as the questions that are actually being asked in Kenya?

PN Yes, exactly. The ones which you have articulated. Exactly what you said: Kanu – how can we hold onto power, with Moi still in control. And the opposition, if there is any one unit any longer: how may we capture the same...

BP The same power? Intact, by the way

PN Yes. I don't think the opposition is ever claiming the same power. But nonetheless, they are claiming power, not on behalf of the public, but most in the opposition have now been corrupted by the concept that they should hold *any* power.

[Opposition leaders seek power – not reduced power (in most cases)]

BP But to be precise in 92 or 97, can you name any presidential candidates who were strong advocates of the reduced power of the presidency?

PN Oh, definitely. The whole of FORD-Kenya was dedicated to the concept that there should never be such authoritative rule.

BP So Odinga was the only one.

PN No, I would say that [Kenneth] Matiba, although he is extremely authoritarian, had articulated that this is not the way of government.

BP Well, in 97?

PN In 97 (pause) – there's no political party [advocating for constitutional change that would reduce the power of the President]. There were individuals, but no presidential candidates.

BP Which kind of reinforces your fact that you're asking [about] the opposition if there is a "unit" to it. It [the opposition] is still asking: how do we get power. So they're asking the wrong questions.

PN They are asking the wrong questions.

BP They haven't gone far enough.

PN You see, we were there in 92, because the purpose of multi-party was to change all this. But as the things went deeper and deeper...It's Harold Wilson [a former Prime Minister in the UK] who after 17 years of Conservative government, Tory government [??] in Britain was asked: shouldn't Labour be satisfied with staying in opposition? And he said absolute power corrupts absolutely [Wilson's quote or quote of...??] Being in the opposition that long corrupts the worse [continuation of Wilson quote?? Laughs].

BP So an opposition can self-destruct, too, then.

PN ...True ideologies get hidden in corrupt, one-man governments, but they are there.

Moi's ideology approaches fascism and [prebendalism] personal enrichment from the state.

BP Is there an ideology to Moi's government?

PN Indeed. It is the **use of the state, which is subject to personal accumulation.**

BP What they call prebendalism?

PN No, **its just fascism. It's perverted fascism carried to an extreme. It's a capitalist state subordinated to government by personal dictate and in this case personal benefit.**

BP Do you think there's an ideology on the part of the opposition?

PN DP [the Democratic Party, headed by former Vice President Mwai Kibabki] is the same.

BP Same as...

PN Same as KANU.

BP In 92 to 97 was there any ideology that clearly emerged from any of the opposition parties?

PN No; nothing emerged clearly. What we hoped...I'm sorry, that's not correct. SDP [Social Democratic Party] offered a social democrat alternative in 97 through Charity Ngilu [spelling??]...that's the only one that was offering an alternative to DP and KANU.

...

[Ethnicity used by government and opposition]

BP To what extent do you think ethnicity has either helped or hindered the advancement of human right, or not been a factor.

PN Ethnicity was used to justify oppression. By saying that oppression was necessary to protect some of the ethnic groups because otherwise they would be swamped, or taken over, or discriminated against – used by the state. So Moi [takes action] to oppress the Kikuyu between 1982 and 1992 because they are

a threat to the Kalenjin, to the Maasai, to the coast and the pastoralists. So these people never spoke out against oppression.

BP In terms of opposition politics, do you think ethnicity has been a factor or not a factor?

[In lieu of political ideology, opposition resorts to ethnicity as drawing card]

Theme/theory: ethnic politics (Almond? Kasfir?)

PN Because the opposition parties did not rely upon offering ideology as their justification for existence, they fell back on the easier appeal to ethnicity. Those opposition parties that have relied on ideology, like early FORD-Kenya and SDP made a better showing nationally; not in numbers, but [in terms of] the spread [over the country]...: in 92 FORD-Kenya, in 97 SDP. They were thin but they were spread better. That is important.

Going back to your question on human rights and ethnicity, there was also a justification to use violations of human rights, saying Kenyatta did this to everybody else, therefore its OK if the Kikuyus get a taste of this medicine as well.

(end of tape one, side two)

(being tape two, side one)

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[Strong case against political ethnic balancing]

PN The argument is that ethnicity underground is a poison so we might as well recognize it and contain it. That is an argument by planners from outside. It's the consultants who come in from all sorts of places.

BP I heard the argument from a Kenyan who came here.

PN He's still an outsider because he's looking at it from that starting point. Let's say that we have Parliament which is based on ethnicity and we divide Parliament into the exact proportions of the population. How does that improve anybody's life? Moi is still the President. How does that make an [names a small ethnic group] feel that his life is any better? How does that improve life in Turkana [region]?

The answer is not acknowledging ethnicity, the answer is challenging corrupt personal rule. The rule of law will ensure that those people at the coast have as much a part of the national resources as someone in Nyanza. But if you have a government, a Parliament in which Ministers are five Luo, and four this, and one that, and you don't improve the roads in Luo land for 20 years, that's exactly what has happened. Every government of Kenyatta and Moi has had a perfectly acceptable ethnic balance. And our country's in ruins. It's in ruins.

BP So the Cabinets have been ethnically balanced.

PN Of course they have, so there is always an appearance of this. And then you put this into Parliament. And what is the MP who is supposed to come from, let's say Maranga. Is he a national member or is he a member of the Kikuyu tribe. The whole starting point is that all these people are tribes and we've got somehow primitive, primordial loyalty that doesn't exist anywhere else.

BP Primordialism

PN It's the primordialism argument, right. There are more Kikuyus than there are Norwegians. Why don't we call them tribes people? Why aren't the Danes a tribe? ... Why are the Estonians a nation and we are not? They're only 1 million. This type of [logic is] utter rubbish.

BP Would you say that Kenya is a nation in the sense of nation being defined as a group of people who collectively see a common identity.

PN No, we are in massive danger of disintegrating. It's astonishing that we are still – that people believe that they are Kenyans, and we act as Kenyans despite all these centripetal forces [forces that pull apart]. Nigeria is a bunch of tribes and therefore – they are either Muslim or Christian. What is this rubbish? We've had more nonsense in Northern Ireland between Protestant and Catholic under the British. And yet we don't see this argument about whether Britain is collapsing or whether people are truly British or not British.

BP You're serious about a potential disintegration of Kenya, aren't you?

PN The way Moi was taking us, through this dependence on ethnicity and division, its astonishing that we had not gone much deeper [, into disarray]. It's a testimony to the energy and the integrity of a large number of Kenyans that we push aside all these forces of tribalism. And these are encouraged by people who come in and talk about 'we must contain ethnicity and recognize it, etc., etc.

Two things are happening. One is that the West is encouraging the donors, encouraging this business about one President, two Vice Presidents, One Prime Minister, two deputy Prime Ministers.

BP Ethnic balance.

PN Ethnic balance. If its so nice, why don't we have it at Westminster with Scotch, Welch and Irish.

BP Good question [laughs]

PN And the truth is, Bob, that it doesn't work. That is why Irish home rule Members of Parliament was not a success. You ultimately had to devolve.

BP You spoke of the strength of the people and resisting some of the pressures from the government. When I was in the Luyah area during the clashes, there were a series of meetings between Nandi and Luyah in which they defied the state and said we will not be a part of this massacre. And they made local peace treaties. Among the elders; and it held. It wasn't everywhere, but in the areas they met it held.

PN It's wonderful. It's an untold story. One person who's developing the peace traditions of Kenyan Society is Sultan Sonjee [??] Dr. Sonjee – I'll give you the contact, and a cutting from the People last week saying exactly what you were saying: we will not be used again for ethnic clashes. It is a remarkable thing that we have held and it is something to be nurtured, and you don't nurture it by creating offices on ethnic lines and call it ethnic balance. This is quite certainly a killing of a spirit that is going in a completely different direction. Let us nurture the Kenyan outlook which is so strong despite all these things. And we've got to think what will happen when we have the ethnic balance of a Kikuyu President and a Luo Prime Minister and a Luyah Vice President and a Coast Second Vice President and two deputies, one from...

BP You still look at the roads in Turkana.

PN That's No. 1. Then he says: I'm here because of ethnic balance, so my job is to look after my own ethnic loyalty.

BP It can encourage an ethnic division.

PN Absolutely. And ethnic responsibility as opposed to national responsibility for these offices. And even if they pretend and say we are *national* officers, their first loyalty in their heart is to the very constituency which has sent them, which is Kikuyu or Luo, or Luyah. What will you tell the Somalies? Who will bring the Somalies into the presidency? [They] are a small number who have no natural resources; nothing there. What are we going to tell that Somali girl child in the school? You can never be Prime Minister: there are five places and you haven't gotten the divisions to take you there?

BP Once you cut somebody out you begin to look at how to take over.

PN And you're breaking the country.

BP OK. I think you've made a strong case.

PN This is ridiculous. There are so many precedents we have to look for. You see, we have abandoned history. We Kenyans, not knowing our history, think all these problems are coming to us for the first time and that no other human society has ever dealt with these problems. This happened in 1789: how do you balance Pennsylvania and Rhode Island [when the American constitution was being made] And what powers will you give to Rhode Island? Pennsylvania said: get lost. Not only are we bigger 100 times than Rhode Island, but we manufacture things which they don't. They don't create wealth. We do. So we must have 20 representatives and they can have one, or three. So everybody said that is sensible, but the effect will be that Rhode Island doesn't have a bicameral thing wherein the second chamber, whether you are Pennsylvania or Texas, which had not been there, and Rhode Island, you will have one Senator for each state; and later it was two senators. Isn't that sensible? Why, because you are asking the real questions. You didn't go and say: we are all brothers and sisters, and we must all be together because of our inalienable rights. There were stormy sessions in South Africa. Here there are no stormy sessions.

BP You need a few.

PN We definitely need a few. So we are not the first people who have tribal imbalance.

BP But, let me ask you. At these stormy sessions, everytime I read the paper it seems like there are a lot of stormy sessions in Parliament which reduce...well, on the one hand there are a few Members of Parliament raising substantial questions about health, education, roads and things. They seem to be a minority. The majority of verbage in the Parliament seems to be putting each other down and insulting each other.

PN Well, that's a House of Commons tradition. But, that's not where the real...In South Africa you didn't need Parliament to do the real negotiations.

BP So I'm watching the wrong stage.

PN That's right.

BP That is a stage

PN That is a stage

[Real talks, real negotiations are needed]

BP Where is the real action happening.

PN It's not happening. The Kamatusa [??] talks, Maasai, Kalenjin, Turkana: its between Moi and GEMA 98 and 99.

BP Those are real talks

PN Those are real talks. And you know why they broke off? The Kikuyus said: get lost. We can live without you and you can't live without us; and what you're offering us is nothing. [??need other sources on these talks] And that's still the debate going on in Kikuyu land just now: whether to accept [dialogue] or not.

When you come down to real talks. Why did the ethnic clashes stop in the Rift Valley?

BP Good question; because they continued before and after the election then they petered out. Why did they stop?

PN Well, one time they stopped because the Kikuyu went back and slaughtered a few Kalenjin.

BP Oh, they armed and fought back.

PN Yes, they armed and fought back. Real negotiations too place: you kill me, I'll kill you. You see at first they sat back and said this is ridiculous. Then they armed...they brought money, bought guns and came back... But I'm saying that that is the healthier – it brings about a healthier, political solution,

which has held ultimately because it comes from conviction. The end of colonialism doesn't come through conviction, it comes through the fact that change must take place.

So you've got a structure of government. Why are all these countries failing? They all started in the 1960s. Why are they failing? Because the social beliefs and the political language do not coincide; the political practice and social practice are not overlapping.

BP Africa and Asia. The real negotiations are not taking place. How do you force those negotiations to take place?

PN Eventually it is precisely by these errors and successes that you forge it by yourself. That is why this constitutional process is an artificial one. South Africa's constitution came after the forging place took place. The constitution-making came when [refers to a white radical who] could stomp into the constitutional thing and say: I want a separate state, white state. Nobody said you are a white colonialist. Because everybody trusted that everybody could freely express [themselves]. But all that hard negotiations had gone *before* (emphasis). That is where the constitution-making must take place.

BP So in other words if human rights, within the pluralistic context, are to be advanced, you first have to use civil society in such a way that you force, through mass demonstrations – I'm adding my own words here, perhaps, to force the government to say: let's get down to some real negotiations.

PN And not only the civil society..

BP Am I characterizing correctly what you are saying?

PN Yes, and not only the government, its not civil society only. All (emphasis) Kenyans, all persons in society – they may be politicians, military – it's not an accident that in the U.S. – look at your Secretary of State: Colin Powell – Army man; Alexander Haig – Army man; [George] Marshall – army man; [President Dwight] Eisenhower – army man. It's not a coincidence. Because they bring to government a sense of reality and the ability to decide what can be done in the ultimate. So everybody has a part to play in this process in bringing the real questions.

What is happening in the U.S. just now? It is the divorce of reality from those who are running the events. And that is really a danger in the U.S. But it happens. Here you confuse what is in the newspaper with reality. For example: creating Uhuru. You created George Bush. W. This guy.

BP About the same strength.

PN About the same strength. You know what Moi is saying? He's saying: what are you saying? He is creating dynasties. You are creating dynasties there; why are you opposed to this? What am I doing wrong.[laughs] No problems there.

What are the steps, and when should they be taken?

BP Could you answer that?

PN Yes. **The steps must be the building of trust and the ending of distrust.**

BP But how does civil society and the others get that ball moving. How do you begin to build trust in a society where there is no trust.

PN Firstly, by pushing those demands (exactly what you said) by mass action till the point is reached where the negotiations become necessary. Just now Moi doesn't have to negotiate with anybody. The Boers [in South Africa] didn't have to negotiate in 1948, or 58 or 68 or 78. Finally, then they did. That's the reality of power.

[Mass action and pressures brought multi-party to Kenya]

So you have to – don't wait back until [Yash] Ghai [head of the constitutional review process underway in 2002] brings about change in Moi. Or, that if you sit at home, Moi will change. It is when these pressures and mass action came together that multi-party came. The pressures built up again, they [the

government] was forced to talk. IPPG failed for whatever reasons, but the pressure that was built up is the thing.

BP So that has to be re-ignited? Back to the basics.

PN Back to the basics till those people who misused power are under pressure to negotiate.

BP But is it true that in a country which has seen some middle class development, then you reach for the middle class support, that they, in fact, are hesitant to risk the little that they have gained in order to join that mass action?

PN Of course. But **why are you looking to the middle class for mass action?**

BP Would you look for the lower income classes?

PN No, you look for the majority of those people who come to it, either by expedience or conviction.

BP Whether they are poor or rich?

[The “real questions” in Kenya today]

PN Whether they are poor or rich. Whatever it is. If that pressure comes, then the question comes –**the real questions in the country today are:**

Will you kill us, Kalenjins and take away the wealth we have illicitly accumulated to this extent?

Who will protect me and my family?

Will the Kikuyus take over and never release – because they think it was a mistake ever to let power go out of the House of Mumbi [?? Spelling]?

What will we do with Maasai land? They are half a million people and they’ve got half the country, or one third of the country. They don’t exploit it and we are having a population pressure.

What do we do about the Muslim? How do we deal with, acknowledge Islam in this country?

There are real questions

BP [unclear on Muslims point]

PN One third of our people are Muslims. And we ghettoize them to the coast. And ghettoize them here.

BP And we saw them during those demonstrations down there [that there is] potential volatile [area].

PN Those people are absolutely disgusted with the way they are being treated. When Likoni [site of coastal violence funded by the government against Luyahs and Luos – see HRW report in 2002] came and the tourist industry collapsed, the Digos and others joined them [Muslims], saying now we are all coast people.

BP So those are the real questions. You’re talking about re-ignition of social movement.

PN ...**That is correct. Around what? Around a real change of the system.** Not [just a change of] individuals. Its not enough for Moi to go. We have to change the system that he has embedded – he and Kenyatta have embedded in this country, which is aimed at enriching themselves, unaccountability...

BP And that can be done peacefully?

PN (pause) Let me put it this way; Kenyans only want it done peacefully. And that’s why its so painful and that’s why its so long a process. That’s why its so difficult to keep the momentum. Kenyans want it both peaceful and that people must be engaged in the change of this process.

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[Needed: a “new system,” not just some piecemeal reforms]

BP So you need another NCEC?

PN No, you need another ignition, as you said, of the desire on a broad scale to act for change.

BP Perhaps a naïve question, but even power-hungry people get richer in a country where the economy is stronger. Would you say there is a possibility of seeking an actual restructuring of the power system

here, which involves a better economy? Maybe that can be the ignition issue, and actually involve all forces and not just have it in an opposition to a KANU or a regime?

PN Such as [his first question to me]?

BP In other words KANU and opposition working together to achieve an economy that is going to make everybody richer and in the process introducing legitimate, major economic reforms, and political reforms that address these basic questions.

PN It's the same question. Any such movement must change the system. Otherwise it becomes a participant in that system. Let me give you an example. Suppose Moi – we've been asking for a national government, for example, for a while. It's no longer a sensible thing.

BP I'm not sure what it meant anyway.

PN Yes, I'll tell you. A national government in the British system means that the government is made up of members of the majority party as well as the minority party, because there is a specific emergency which has to be solved, and the national government comes together for that specific time period to solve the emergency. In Britain it was done in wartime. In Britain it was done during the 1926 general strike and in the mid-'30s during the Depression. Now, let us assume that Moi says yes, I have agreed to a national government, I have got three people from DP in my Cabinet and 3 people from FORD-Kenya, etc., etc. And he keeps the same system going.

BP OK.

PN He makes the decision

BP Doesn't address the problems you were talking about. Get's you through the emergency but that's it. So it's not realistic now

PN Now. It's so to say that we join together, of itself doesn't solve anything. It has to be the change of [the system]. That's why the national government must have an agreed purpose, namely to put into place a new system.

BP It's temporary for a specific purpose.

PN The purpose being to put in a new system.

BP In any case, its not on the agenda right now.

PN And its not on the agenda right now.

BP You wouldn't put it on the agenda right now?

PN No, 'cause Moi is under no pressure to accept [change].

BP And where do you begin again?

PN You being again with the pressure.

BP What's the igniting issue?

PN That is a difficult [question] because it is what people can respond to.

BP Well, if you want to know what people are responding to in matatus and in taxies and in the streets, its poverty; absolute poverty. Massive number of people depending on each person [who has a job]. The salaries are going up – slower than inflation. Those who have jobs are being inundated, as you know, by the number of people who don't have jobs who are members of their family. So there aren't any savings, there's no investment and there are extreme cases of poverty here, and it runs right through the middle class, and certainly hits the poor.

PN Absolutley [quietly].

BP One lady I spoke with, a secretary, said *if* she economizes very very much, she can save 1,000 shillings in a month.

PN And that [the savings] is finished if there is an emergency.

BP Oh it doesn't usually happen [that she has any savings at the end of the month]. And I asked another guy: how many people do you know who have jobs. He said its more the other way around: almost everybody I know doesn't have a job. If there's any igniting issue, it's the economy.

PN But why is it not igniting.

BP Because if you're so poor, do you have time to leave your job and go to a demonstration? And if you don't have a job, you probably do, but then you get riots and stone-throwing. Right after Ouko was buried, I went downtown and was nearly hit by rocks that people were throwing. And it was robbers. The ordinary people were standing quietly along the street [near the church where the funeral service was held in Nairobi] in a most *impressive* demonstration of silence [and anger at the murder.]

PN Precisely. And this is the political demand that Kenyans are making, saying we may be poor, but we still want change and we want it peacefully. And that's a very, very difficult – it's easier to be violent; it's easier to justify bloodshed for a specific, quick change.

But there is no such quick change. It never comes about.

BP Organize women.

PN That is correct.

BP In Nigeria, women took over an oil platform and got more satisfaction than the men have had in the last fifteen years.

PN That is correct

BP But in about three weeks.

PN Even poverty as an igniting issue is curbed by people saying 'peace first.' The danger is not a war-like, violent breakdown into a Somalia, but that Moi's type of government brings this country into an Argentine and now Uruguay.

BP Argentina is suffering; the economy is just zero.

PN That's what I mean. It's not just poverty; it's the disintegration of economic structures, which is the danger. We fade away. You know, when we break down, this is the ego-centric view that we Kenyans take: if something goes wrong, the world will be interested in saving us.

BP Don't count on it.

PN Don't count on it. Not only is nobody interested. No, we are not going to be ruins to be admired. We'll just be some sort of debris around the continent.

BP There is a major famine now in South Africa, Southern Africa. They are having a hard time raising money.

PN Absolutely, absolutely. This is not where we should be looking. Of course we [need] help in an extreme emergency, but this is not. So the issues that demand – there's another factor in the human rights things. So many people are being killed (emphasis), in police cells, by being beaten up, being ill-treated...

BP Tortured.

PN Tortured. And there isn't a sufficient outburst of condemnation. Even neighbors and families of these people...

BP Why is it happening; not the quietness. Why are police picking on ordinary people like that. [See HRW report of 1997 documenting systemic use of torture by the Kenyan police].

PN Because there are no curbs on them. They've been told, you do the things we want done and you're covered. And therefore...

BP But what is the political aim...

PN Hold on (emphasis) And therefore, anything else you do, we'll cover you anyway. That's what they believe. The political aim is to insure all the time that there is no threat to changing Moi and the system.

BP But these are ordinary criminals that are being tortured.

PN No, that's not being done because the government wants it. The others are simply done – either you emptying pockets or you're taking things from somebody. It is the way in which police

...

BP Is it possible non-violence could be used to address some of the human rights questions you are talking about.

PN That's exactly what FORD-Kenya, NCEC have used. The violence has never come from any of the persons who are protesting. Violence has come from the organized police or from the unacknowledged, private militias of KANU and of individual people. It is exactly the point that is being made. Wherever there is a demand which is supported by mass action, Moi has engineered violence so he can say it is these people who are violent. It would be ridiculous for those who come out in mass action to come with arms; and nobody does. You can see it in the photographs. Because the GSU, the police, are overwhelming [laughs]. [Note: in August 2002, a demonstration of several thousand members of a loose-knit band known as Mungiki marched through downtown Nairobi and many of them carried clubs or machetes [??get description from clip] in full view of the police, who did not stop them, despite the government having banned the group a few months earlier. They were supporting President Moi's candidate for President, Uhuru Kenyatta. Later that week police violently broke up an opposition political rally in downtown Nairobi. – see clip??]

BP It has to be non-violent because they couldn't overpower them. Those were pretty impressive mass actions in 1997.

PN Absolutely. Every month it increased.

[Moi learns to use only enough violence to stop threats to his regime].

BP And I noticed there was an initial hesitation by the government to crack down. They cracked down a little bit more, a little bit more, then boom.

PN Boom. Yes, exactly. Because they became a danger. **That is what Moi has learned: repression only to the extent that it is necessary. If a lot is necessary, he'll use a lot. If a little is necessary, he'll use a little. And if none is necessary, he won't use it. This is a 'smart' operation.**

[**SA- 97 violence had an IMPACT: (1) further cut into his legitimacy at home and abroad; (2) stopped IMF funds ??; (3) started IPPG]

BP Was there any international or domestic benefit from the fact that when pictures of Njoya, and I think Lamba was nearby, were beaten and some people were killed, but he was not? Was there any positive fallout from that?

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PN Yes, it reduces the legitimacy of the government more and more; not just within – I don't think Moi has any legitimacy within the country. But outside, it decreased it more and more and more. So that for the last two or three years, I think it is clear that Moi carries no standing whatsoever – he has some uses, but he carries no standing.

BP IMF has frozen funds since...

PN 97-98.

BP In other words it [the violence against demonstrators in 1997] did do something internationally in terms of the donors, and the respect [or rather lack of it domestically]. And it did get IPPG, which wasn't much.

PN You see IPPG is the opportunity; that we squandered the opportunity is another matter. But the **mass action forced KANU to the bargaining table. Ufungamano [2001] forced KANU to the bargaining**

table, where the two constitutional commissions were on. Again, the negotiations were squandered. So Moi is a better negotiator. Another major player who's been a bad negotiator is the churches and the [religious bodies]. They're sellouts; disgraceful.

BP In terms of the Catholic church, or others?

PN All

BP In terms of the last 92-97 or just 97.

PN Both. In 97 they went in and Nzeki [head of the Catholic church in Kenya] said we have been taken for a ride. I said – you didn't see it? In IPPG

BP I was also thinking of his decision not to go forward in the march in 1997.

PN That came later.

BP One analysis of that says that if you looked out and saw that many people, with that much armory against the people, almost any pastor would probably say: don't do it.

PN Really? [emphasis] So then – Njoya did it – Lamba did it and he didn't have to have a collar. The nuns were there, they didn't need Nzeki. But then there were other problems. He was under pressure [another source said he was under pressure for alleged personal misconduct that was not widely-known]. But before that, in 97, he genuinely went into IPPG, not to betray anybody.

BP How could he go into IPPG, that was inter-parliamentary and he wasn't in Parliament.

PN They were the backing. [unclear] go ahead with this; the legitimacy that is given is astonishing. So, they said this is the right thing to do.

[Lessons from Kenya]

BP So if you look back, and you were in an international conference, a small conference, of people strategizing about the advancement of human rights in authoritarian state-And before I came out here, someone said, stick with this topic because you're looking at authoritarian states and in fact, there are a lot of them left, and they are not going away.

PN And they keep coming back.

BP They do. It's like democracy hasn't won the war yet. If you were sitting around strategizing, you were saying, what we learned in Kenya: you should be aware...you should do this, you should try this, because we didn't do it right.

[HR TACTIC: Mass action drives a regime to bargain. In Kenya, the "system" must be changed.]

PN I would say, **keep supporting mass action, with money, with protection, with publicity, with legitimacy, to bring these regimes to the bargaining table. At the bargaining table, let's first agree: is it the common aim that the system much change? Not these reforms. Will the system change.**

BP And what are the hard questions.

PN What are the hard questions. Because if the system changes, then these people must get reassurances on the hard questions. DeKlerk didn't change because he suddenly found he loved ..Nelson Mandela...black people.

BP No, the country was falling apart with the resistance, the mass action...

PN And the economy going down.

BP And the primary school children getting killed by tanks, armored cars.

PN Yes. What are you left with? Nothing.

BP Somewhere within him there was some decency.

PN He was a descent man. But if you went to Bohta and Milano [??]

BP No, Bohta was not a descent man.

PN So, fifty percent of the Boers were not descent in that respect; and fifty percent were. They themselves could see that it was a matter of time before their own children would be killed.

BP Are you optimistic about the future of Kenya.

PN Yes, I am. Surprisingly. [soft laugh]

BP I'm going to quit it there..

(end of interview; end of tape two, side one)